

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 02/13/2015

TIME: 09:07:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Tari Cody

CLERK: Christine Schaffels

REPORTER/ERM:

CASE NO: **56-2011-00408712-CU-CO-VTA**

CASE TITLE: **North Kern Water Storage District vs City of Bakersfield**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion to Tax Costs (2/4/15) under submission, now rules as follows:

RULING

The City of Bakersfield's motion to tax costs is granted and denied in part. North Kern Water Storage District ("North Kern") is taxed \$3,073.39 as explained below. North Kern is awarded costs of \$46,912.33.

DISCUSSION

CCP §1033.5(a) lists recoverable costs. CCP §1033.5(c)(2) states allowable costs must be "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation." CCP §1033.5(c)(3) requires allowable costs to be reasonable. CCP §1033.5(c)(4) gives the court discretion to award as costs "[i]tems not mention in this section."

Seeever v. Copley Press, Inc. (2006) 141 Cal.App.4th 1550, held that if the cost is mentioned in CCP §1033.5(a), then it cannot be awarded under subdivision (c)(4) even if the costs was reasonably necessary. Thus, for example, since subdivision (a)(3) allows for recovery of the cost of an original and one copy of a deposition, the court cannot award costs for more copies simply because they were reasonably necessary to the conduct of the litigation. (*Seeever v. Copley Press, Inc., supra*, 141 Cal. App. 4th at 1559.) Similarly, because subdivision (a)(13) allows for costs for photocopies of exhibits "if they were reasonably helpful to aid the trier of fact" if there never was a trial, yet those costs were incurred, then the court cannot award those costs under subdivision (c)(4) even if photocopying them was reasonably necessary.

In contrast, several cases have awarded costs that arguably are "mentioned" in subdivision (a), but

would not otherwise be allowable absent the court's discretionary authority under subdivisions (c)(2) and (c)(4). For example, the court in *Applegate v. St. Francis Lutheran Church* (1994) 23 Cal.App.4th 361, 364 allowed costs for photographs and blueprints even though the case was dismissed before trial, and the court in *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 855–857, allowed costs for photocopying exhibits even though most of the exhibits were not used at trial. "An experienced trial judge would recognize that it would be inequitable to deny as allowable costs exhibits any prudent counsel would prepare in advance of trial." (*Id.* at 856.)

This court finds *Applegate* and its progeny the more persuasive. Although not all reasonable costs can be awarded because they are expressly disallowed under CCP 1033.5(b), if costs are not expressly disallowed, the court has discretion to allow them under subdivision (c)(2) and (c)(4) if they are reasonably necessary to the conduct of the litigation. This interpretation of CCP §1033.5 gives the court discretion to consider and award costs for items that, because of advances in technology, for example, may not have been contemplated, yet are clearly reasonably necessary to most trial counsel in conducting litigation.

Item No. 1. Motion to tax fax filing fees is denied. Fax filing is expressly authorized by state and local rules. Even if not considered "filing" or "motion" fees under CCP 1033.5(a)(1), they are not prohibited under subdivision (b) and have been shown to be reasonably necessary to the conduct of the litigation. (CCP §1033.5(c)(2), (4).)

Item No. 4 Motion to tax deposition costs is granted in the amount of \$630 for summaries, some of which North Kern concedes were never received. The other depositions costs, including costs for expedited, rough, digital, and condensed transcripts have been shown to be reasonably necessary to the conduct of the litigation and not merely convenient or beneficial to its preparation. (CCP §1033.5(c)(2), (4).)

Item No. 5 Motion to tax service of process costs is denied.

Item No. 8 Motion to tax witness fees is granted in the amount of \$172.

Item No. 11 Motion to tax models, blowups, and photocopies of exhibits is granted in the amount of \$427.54 (for blow-ups which the court did not find particularly helpful since there were already copies, sometimes several, available to the court), \$206.50 (duplicate charge), \$131.50 (not a photocopy charge), and \$933.39 (reasonable estimate of cost of exhibits not used at trial), for a total of \$1,698.93.

Item No. 13 Motion to tax "other costs" is granted in the amount of \$129.50 (for courier costs for filing post trial briefs), and \$442.96 (for Mr. Diamond's lodging as his presence was convenient to North Kern but had not been shown to be necessary to the conduct of the litigation), for a total of \$572.46.

The Clerk is directed to give notice.